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EXAMINER

GRAHAM, G

ART UNIT

PAPER NUMBER

1744

DATE MAILED:

11/10/96

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

12-29-96 → Saturday
↳ 12-30-96 → Monday

Office Action Summary

Application No.	777,032	Applicant(s)	Contan zaro
Examiner	G. Graham	Group Art Unit	1741

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- Responsive to communication(s) filed on 9-28-98
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- Claim(s) 1-6, 12, 15, 25-45 is/are pending in the application.
- Of the above claim(s) 1-6 is/are withdrawn from consideration.
- Claim(s) _____ is/are allowed.
- Claim(s) 12, 15, 25-40 and 43 is/are rejected.
- Claim(s) 42, 44, 45 is/are objected to.
- Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on _____ is approved disapproved.
- The drawing(s) filed on _____ is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All Some* None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) _____.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Attachment(s)

- Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ Interview Summary, PTO-413
- Notice of References Cited, PTO-892 Notice of Informal Patent Application, PTO-152
- Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

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DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12, 25, 26, 30, 32, 33 and 35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 12, lines 12, it appears "stand" should be ---base--- since the feet are part of the stand. In line 13, the limitation "and said stand" appears indefinite. It is not clear how the slot in the stand receives the stand.

In claim 25, defining that the stand is detachable and connected to a free end of the handle appears duplicative since claim 12 already defines the stand as receiving the handle in a slot thereof.

In claim 26, it appears improper to define that the stand is "formed onto a free end of said handle" since claim 12 has already defined that the handle is received into a slot of the feet and base. It is unclear exactly what is being defined.

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In claim 30, it appears improper to define that a base is connected to a bottom side of the stand when the base is part of the stand.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 27, 29, 31, 37 and 39 are rejected under 35 U.S.C. 102(a) as being anticipated by Barre '889.

The patent to Barre discloses the invention as is claimed. Barre discloses a toothbrush assembly including a handle (5) which is considered to be in the shape of a torso, at least as far as defined, bristle head (3) having bristles (4) extending therefrom and a stand (7) for receiving the handle in a recess (8) therein. The stand has the shape of feet (11a,11b) thereon. The feet extend in the same direction as the bristle head and torso.

With respect to claim 31 and 39, the recess is considered to extend at a "heel" of said feet, at least as far as defined.

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Claims 27, 34 and 36 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Zandberg et al '574.

The patent to Zandberg discloses the invention as is claimed. Note that at least the back of the feet extend in the same direction of the bristles of the head.

Claim Rejections - 35 USC § 103

Claim 28 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barre '889 in view of Vandeventer '275.

The patent to Barre discloses the invention as recited above, with the exception of a cover to fit over the bristled head of the toothbrush.

The patent to Vandeventer discloses a toothbrush (fig. 1) which employs a cover to fit over the bristled head of the toothbrush.

It would have been obvious to one of skill in the art to employ a cover with the toothbrush of Barre, as clearly suggested by Vandeventer, to provide protection for the bristles when the brush is not in use. Use of covers for toothbrushes is notoriously well known. It appears the cover will perform as claimed.

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Claims 30, 32 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barre '889 in view of Atkins et al '464.

The patent to Barre discloses all of the above recited subject matter with the exception of a base connected to the stand for additional stability.

The patent to Atkins discloses a toothbrush assembly that employs bases (76) on the stands (see figure 16) to provide additional support to the stand.

It would have been obvious to one of skill in the art to provide the stand of Barre with a base thereon to increase the stability of the stand, as clearly suggested by Atkins.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barre '889 in view of Zandberg '574.

The patent to Barre discloses all of the above recited subject matter with the exception of the first end of the handle having expanded members.

The patent to Zandberg discloses all of the above recited subject matter.

It would have been obvious to one of skill in the art to provide the handle of Barre with expanded member, as clearly suggested by Zandberg, to improve the animated look of the toothbrush assembly.

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Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barre '889 in view of Vandeventer '275 as applied to claim 38 above, and further in view of Zandberg '574.

The patents to Barre and Vandeventer disclose all of the above recited subject matter with the exception of the first end of the handle having expanded members.

The patent to Zandberg discloses all of the above recited subject matter.

It would have been obvious to one of skill in the art to provide the handle of the modified Barre assembly with expanded members, as clearly suggested by Zandberg, to improve the animated look of the toothbrush assembly.

Response to Arguments

Applicant's arguments filed September 28, 1998 have been fully considered but they are not persuasive.

As stated above, there still remains some 112 second paragraph deficiencies. Otherwise, claims 12,15,25 and 26 are allowable. Noting that claim 26 does not now appear proper

With respect to claims 27-45, such are new claims and have not been previously rejected. Applicant has not specifically pointed out how such claims define over the art of record. However, the Examiner will respond to the remarks applicant has made with respect to the Barre and Vandeventer references.

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Applicant's remarks with respect to the Barre reference are noted. However, it appears applicant is referring to the '859 Barre patent and not the '889 Barre patent, as was applied. Further, merely defining that the handle has the shape of an animate object does not impart any particular structure to the toothbrush assembly. The handle of Barre '889 is considered to be an animate object, at least as far as defined. There does not appear to be specific structure that must be associated with a cartoon caricature. What structure must be associated with a cartoon caricature, and what must it look like?

Applicant's remarks with respect to the Vandeventer reference are noted. However, there appears no prohibition with using the cover suggested by Vandeventer with the assembly of Barre. Using the cover of Vandeventer with Barre would not destroy the Barre assembly in any sense. Further, such cover applied to Barre would have a "shape of a head matching said shape of said handle", at least as far as defined. Applicant has defined no specific structure for the cover that is not shown or suggested by Vandeventer. Using language that suggests an animate object shape defines no particular shaped.

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Allowable Subject Matter

Claims 42, 44 and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 12, 15, 25 and 26 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claims 33 and 35 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Gary K. Graham at 703-308-1270. The Examiner can normally be reached Tuesday through Friday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Robert Warden, can be reached on (703) 308-2920. The fax phone number for this Group is (703) 305-7719.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0651.

November 9, 1998
gkg



GARY K. GRAHAM
PRIMARY EXAMINER
GROUP 1700